

Message Text

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TO AMEMBASSY BONN

USCINCEUR

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C O N F I D E N T I A L STATE 247153

E.O. 11652: GDS

TAGS: MARR, MILI, GW

SUBJ: MEMORANDUM OF UNDERSTANDING (MOU) ON USE OF
GERMAN AIRFIELDS BY US FORCES

REF: A. BONN A-700
B. SECDEF 6029 (11 APRIL 72)

1. FOLLOWING ARE PRELIMINARY STATE/DEFENSE VIEWS REGARDING
FRG COMMENTS ON DRAFT MOU SET FORTH IN REF A. DEFINITIVE
GUIDANCE MUST AWAIT RECEIPT OF FRG REDRAFT.

2. RE FRG CONSTITUTIONAL PROBLEMS: UNDER ARTICLE 57,
PARA 1, SUPPLEMENTARY AGREEMENT, US FORCES' AIRCRAFT HAVE
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RIGHT TO FLY OVER FRG TERRITORY, AND UNDER PARA 6, SUCH

AIRCRAFT ARE AUTHORIZED TO USE CIVILIAN AIRFIELDS IN CASES OF EMERGENCY OR IN ACCORDANCE WITH REQUISITE ADMINISTRATIVE AGREEMENTS- WHILE THE PERIOD PRIOR TO NATO ALERT MAY CONSTITUTE NEITHER AN "EMERGENCY" NOR A "GRAVE SITUATION" UNDER WHICH THE FRG PARLIAMENT MAY EMPOWER FRG TO SUSPEND PRIVATE RIGHTS TEMPORARILY, AN ADMINISTRATIVE AGREEMENT IN IMPLEMENTATION OF ARTICLE 57 OF THE SUPPLEMENTARY AGREEMENT SHOULD SUFFICE AS THE "DECISION OF AN ALLIANCE TO WHICH THE FRG IS A PARTY" WHICH CAN RECONCILE THE MOU WITH FRG CONSTITUTION ARTICLE 80A.

WHILE THE REQUISITE "DECISION" CAN BE CONSTRUED NARROWLY AS REFERRING TO A NATO DECLARATION OF ALERT, A BROADER CONSTRUCTION IS MORE CONSONANT WITH FRG OBLIGATIONS UNDER ARTICLE 3 OF THE NORTH ATLANTIC TREATY.

3. RE ARTICLE 1: WE SEE NO PROBLEM WITH THE PROPOSED EDITORIAL CHANGE AS THE BEST EXPRESSION OF THE INCLUSIVE-NESS OF ARTICLE 1, PROVIDED THERE IS A CLEAR UNDERSTANDING THAT "AIRCRAFT USED IN THE SERVICES OF THE US FORCES" INCLUDES CHARTER AIRCRAFT. THE NEGOTIATING RECORD SHOULD REFLECT FRG AGREEMENT ON THIS POINT.

4. RE ARTICLE 3: WE DO NOT CONCUR IN THE VIEW THAT THE PLANS PROVIDED BY A JOINT WORKING GROUP OBIVATE THE NECESSITY FOR A 30 DAY PROVISION. SUCH TIMING CONSIDERATIONS ARE COMMON IN INTERNATIONAL AGREEMENTS FOR THE PURPOSE OF ACCELERATING BUREAUCRATIC PROCESS. WE PREFER RETENTION OF THE 30 DAY PROVISION, PENDING FURTHER CLARIFICATION OF FRG REASONING, AND OTHERWISE CONCUR IN EMBASSY AND EUCOM VIEWS.

5. RE ARTICLE 4: CONCUR IN THE VIEW EXPRESSED REF A THAT ABSOLUTE PRIORITY FOR U.S. AIR MOVEMENT IS NOT NECESSARY. HOWEVER, THE MOU SHOULD PROVIDE FOR ESTABLISHMENT OF PRIORITIES THAT WILL ASSURE COMPLETION OF U.S. FORCES' MISSION WITH THE LEAST POSSIBLE IMPACT ON OTHER AVIATION.

6. REQUEST CLARIFICATION OF ADVICE GIVEN FRG RE
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INDEMNITY RESPONSIBILITY TO BE BORNE BY FRG. IT WOULD APPEAR THE MOU SHOULD INCLUDE PROVISION DEALING WITH CLAIMS OR LIABILITIES NOT COVERED BY ARTICLE VIII, NATO SOFA, AND ARTICLE 41, SUPPLEMENTARY AGREEMENT. REQUEST YOUR VIEWS REGARDING THIS MATTER.

7. RE ARTICLE 6: CONCUR IN THE DELETION OF ARTICLE 6, SINCE ENUMERATED RIGHTS ARE COVERED ADEQUATELY BY OTHER

AGREEMENTS.

8. EMBASSY AUTHORIZED PROVIDE THESE PRELIMINARY COMMENTS
TO FRG NEGOTIATORS AT NEXT MEETING. EMBASSY SHOULD
STATE THAT DEFINITIVE US POSITION ON FRG RE-DRAFT WILL
BE PROVIDED FOLLOWING WASHINGTON REVIEW.

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